IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8572 of 2005

Sachin Sudhir Karkhanis
and Ors. .. Petitioners

Versus

Kiran Anant Karnik .. Respondents

Mr.P.S.Dani for petitioners
Mr.Atul Damle for respondent.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 17th January 2006.

P.C.

. Original defendant in Special Civil Suit No.171 of 2005 has preferred this petition under Article 227 of Constitution of India challenging an order dated 9th November 2005 passed by the Joint Civil Judge, Senior Division, Kalyan on an application under section 9A of the Code of Civil Procedure as amended and applicable in the State of Maharashtra. Needless to observe that this

order decides a preliminary objection to the jurisdiction of the Court below raised by the original defendants. Court below on the materials produced and submissions advanced has concluded that it has territorial jurisdiction to entertain and try present suit. It is this order which is challenged in this petition.

2. Mr.Dani, learned Counsel appearing for petitioner took me through the averments in the plaint and contended that it is not a case where the plaintiff has filed a suit for recovery of money but considering the prayers including substantive prayer clause (f), it is clear that the suit would fall within section 16(f) of Code of Civil Procedure, 1908. If that be so, then the suit has to be instituted in the Court within the local limits of whose jurisdiction property is situate. In this case, on the own showing of plaintiff, subject property is situate at Sudhagad Pali which is admittedly beyond the

territorial limits of the Court at Kalyan. He submits that limitation imposed by Statute must be followed and it is not open for the Court below to then apply Section 20(c) of C.P.C. and hold that since cause of action has partly arisen within its territorial limits, it has the necessary territorial jurisdiction.

3. In support of his submissions, reliance is placed by Mr.Dani on a decision in the case of New Mofussil Co. Ltd. Vs. Shankerlal Narayandas Mundade reported in (28) A.I.R. 1941 Bombay 247.

4. I am unable to accept the contention of Mr.Dani for obvious reasons. Firstly, objection to the territorial jurisdiction of a court, in the view of the Supreme Court, is not of such a nature as would completely oust jurisdiction inasmuch as it is an objection which does not go to the root of the Court’s authority. Such

objection, has to be, therefore, considered in somewhat different manner, than objection to the competence of the Court which touches the root of its jurisdiction and authority. That apart, in the instant case, from a perusal of the plaint allegations, which alone should be the governing factor for taking cognisance of the objection raised, it is clear that it proceeds on the basis that monies have been paid at Kulgaon Badlapur (para 9 and 10). The suit is filed for recovery of this amount along with interest. Rest of the prayers in the plaint are essentially with a view to secure the sum which would be ultimately decreed in favour of the plaintiff. Considering such nature of claim, it is not possible to accept the contention that section 16(f) is in any way attracted. This conclusion, therefore, clearly distinguishes and rules out the applicability of the Division Bench decision which proceeds on the basis that a suit for specific performance of an agreement filed, when,

defendants and properties are at different place, would be governed by section 16(d) and in that light and referring to the objection of that nature, that the observations at page 249 of the report have been made. In the light of the conclusion that the suit is for recovery of money which has been paid, according to plaint allegations, within the territorial limits of trial court, the objection has been rightly overruled.

5. I do not find any error apparent on the face of record or nor can the order of court below be termed as perverse so as to call for interference under Article 227 of Constitution of India. Petition is dismissed summarily.

(S.C.DHARMADHIKARI, J)